

108TH CONGRESS
2D SESSION

S. 1438

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 20, 2004

Referred to the Committee on Resources

AN ACT

To provide for equitable compensation to the Spokane Tribe of Indians of the Spokane Reservation for the use of tribal land for the production of hydropower by the Grand Coulee Dam, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Spokane Tribe of Indi-
5 ans of the Spokane Reservation Grand Coulee Dam Equi-
6 table Compensation Settlement Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) from 1927 to 1931, at the direction of Con-
4 gress, the Corps of Engineers investigated the Co-
5 lumbia River and its tributaries to determine sites at
6 which power could be produced at low cost;

7 (2) under section 10(e) of the Federal Power
8 Act (16 U.S.C. 803(e)), when licenses are issued in-
9 volving tribal land within an Indian reservation, a
10 reasonable annual charge shall be fixed for the use
11 of the land, subject to the approval of the Indian
12 tribe having jurisdiction over the land;

13 (3) in August 1933, the Columbia Basin Com-
14 mission, an agency of the State of Washington, re-
15 ceived a preliminary permit from the Federal Power
16 Commission for water power development at the
17 Grand Coulee site;

18 (4) had the Columbia Basin Commission or a
19 private entity developed the site, the Spokane Tribe
20 would have been entitled to a reasonable annual
21 charge for the use of its land;

22 (5) in the mid-1930s, the Federal Government,
23 which is not subject to licensing under the Federal
24 Power Act (16 U.S.C. 792 et seq.)—

25 (A) federalized the Grand Coulee Dam
26 project; and

1 (B) began construction of the Grand Cou-
2 lee Dam;

3 (6) when the Grand Coulee Dam project was
4 federalized, the Federal Government recognized
5 that—

6 (A) development of the project affected the
7 interests of the Spokane Tribe and the Confed-
8 erated Tribes of the Colville Reservation; and

9 (B) it would be appropriate for the Spo-
10 kane and Colville Tribes to receive a share of
11 revenue from the disposition of power produced
12 at Grand Coulee Dam;

13 (7) in the Act of June 29, 1940 (16 U.S.C.
14 835d et seq.), Congress—

15 (A) granted to the United States—

16 (i) in aid of the construction, oper-
17 ation, and maintenance of the Columbia
18 Basin Project, all the right, title, and in-
19 terest of the Spokane Tribe and Colville
20 Tribes in and to the tribal and allotted
21 land within the Spokane and Colville Res-
22 ervations, as designated by the Secretary
23 of the Interior from time to time; and

24 (ii) other interests in such land as re-
25 quired and as designated by the Secretary

1 for certain construction activities under-
2 taken in connection with the project; and

3 (B) provided that compensation for the
4 land and other interests was to be determined
5 by the Secretary in such amounts as the Sec-
6 retary determined to be just and equitable;

7 (8) pursuant to that Act, the Secretary paid—

8 (A) to the Spokane Tribe, \$4,700; and

9 (B) to the Confederated Tribes of the
10 Colville Reservation, \$63,000;

11 (9) in 1994, following litigation under the Act
12 of August 13, 1946 (commonly known as the “In-
13 dian Claims Commission Act” (60 Stat. 1049, chap-
14 ter 959; former 25 U.S.C. 70 et seq.)), Congress
15 ratified the Colville Settlement Agreement, which re-
16 quired—

17 (A) for past use of the Colville Tribes’
18 land, a payment of \$53,000,000; and

19 (B) for continued use of the Colville
20 Tribes’ land, annual payments of \$15,250,000,
21 adjusted annually based on revenues from the
22 sale of electric power from the Grand Coulee
23 Dam project and transmission of that power by
24 the Bonneville Power Administration;

1 (10) the Spokane Tribe, having suffered harm
2 similar to that suffered by the Colville Tribes, did
3 not file a claim within the Indian Claims Commis-
4 sion Act's 5-year statute of limitations;

5 (11) neither the Colville Tribes nor the Spokane
6 Tribe filed claims for compensation for use of their
7 land with the Commission before August 13, 1951,
8 but both Tribes filed unrelated land claims prior to
9 August 13, 1951;

10 (12) in 1976, over objections by the United
11 States, the Colville Tribes were successful in amend-
12 ing their 1951 Claims Commission land claims to
13 add their Grand Coulee claim;

14 (13) the Spokane Tribe had no such claim to
15 amend, having settled its Claims Commission land
16 claims with the United States in 1967;

17 (14) the Spokane Tribe has suffered significant
18 harm from the construction and operation of Grand
19 Coulee Dam;

20 (15) Spokane tribal acreage taken by the
21 United States for the construction of Grand Coulee
22 Dam equaled approximately 39 percent of Colville
23 tribal acreage taken for construction of the dam;

24 (16) the payments and land transfers made
25 pursuant to this Act constitute fair and equitable

1 compensation for the past and continued use of Spo-
2 kane tribal land for the production of hydropower at
3 Grand Coulee Dam; and

4 (17) by vote of the Spokane tribal membership,
5 the Spokane Tribe has resolved that the payments
6 and land transfers made pursuant to this Act con-
7 stitute fair and equitable compensation for the past
8 and continued use of Spokane Tribal land for the
9 production of hydropower at Grand Coulee Dam.

10 **SEC. 3. PURPOSE.**

11 The purpose of this Act is to provide fair and equi-
12 table compensation to the Spokane Tribe for the use of
13 its land for the generation of hydropower by the Grand
14 Coulee Dam.

15 **SEC. 4. DEFINITIONS.**

16 In this Act:

17 (1) ADMINISTRATOR.—The term “Adminis-
18 trator” means the Administrator of the Bonneville
19 Power Administration or the head of any successor
20 agency, corporation, or entity that markets power
21 produced at Grand Coulee Dam.

22 (2) COLVILLE SETTLEMENT AGREEMENT.—The
23 term “Colville Settlement Agreement” means the
24 Settlement Agreement entered into between the
25 United States and the Colville Tribes, signed by the

1 United States on April 21, 1994, and by the Colville
2 Tribes on April 16, 1994, to settle the claims of the
3 Colville Tribes in Docket 181–D of the Indian
4 Claims Commission, which docket was transferred to
5 the United States Court of Federal Claims.

6 (3) COLVILLE TRIBES.—The term “Colville
7 Tribes” means the Confederated Tribes of the
8 Colville Reservation.

9 (4) COMPUTED ANNUAL PAYMENT.—The term
10 “Computed Annual Payment” means the payment
11 calculated under paragraph 2.b. of the Colville Set-
12 tlement Agreement, without regard to any increase
13 or decrease in the payment under section 2.d. of the
14 agreement.

15 (5) CONFEDERATED TRIBES ACT.—The term
16 “Confederated Tribes Act” means the Confederated
17 Tribes of the Colville Reservation Grand Coulee
18 Dam Settlement Act (108 Stat. 4577).

19 (6) FUND.—The term “Fund” means the Spo-
20 kane Tribe of Indians Settlement Fund established
21 by section 5.

22 (7) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior.

24 (8) SPOKANE BUSINESS COUNCIL.—The term
25 “Spokane Business Council” means the governing

1 body of the Spokane Tribe under the constitution of
2 the Spokane Tribe.

3 (9) SPOKANE TRIBE.—The term “Spokane
4 Tribe” means the Spokane Tribe of Indians of the
5 Spokane Reservation, Washington.

6 **SEC. 5. SETTLEMENT FUND.**

7 (a) ESTABLISHMENT OF FUND.—There is estab-
8 lished in the Treasury of the United States an interest-
9 bearing trust fund to be known as the “Spokane Tribe
10 of Indians Settlement Fund”, consisting of—

11 (1) amounts deposited in the Fund under sub-
12 section (b); and

13 (2) any interest earned on investment of
14 amounts in the Fund.

15 (b) DEPOSITS.—From amounts made available under
16 section 11—

17 (1) for fiscal year 2006, the Secretary shall de-
18 posit in the Fund \$17,800,000; and

19 (2) for each of the 4 fiscal years thereafter, the
20 Secretary shall deposit in the Fund \$12,800,000.

21 (c) MAINTENANCE AND INVESTMENT OF FUND.—
22 The Fund shall be maintained and invested by the Sec-
23 retary in accordance with the Act of June 24, 1938 (25
24 U.S.C. 162a).

1 (d) PAYMENT OF FUNDS TO SPOKANE BUSINESS
2 COUNCIL.—

3 (1) REQUEST.—At any time after funds are de-
4 posited in the Fund, the Spokane Business Council
5 may submit to the Secretary written notice of the
6 adoption by the Spokane Business Council of a reso-
7 lution requesting that the Secretary pay all or a por-
8 tion of the amounts in the Fund to the Spokane
9 Business Council.

10 (2) PAYMENT.—Not later than 60 days after
11 receipt of a notice under paragraph (1), the Sec-
12 retary shall pay the amount requested to the Spo-
13 kane Business Council.

14 (e) USE OF FUNDS.—

15 (1) CULTURAL RESOURCE REPOSITORY AND IN-
16 TERPRETIVE CENTER.—

17 (A) IN GENERAL.—Of the initial deposit
18 under subsection (b)(1), \$5,000,000 shall be
19 used by the Spokane Business Council for the
20 planning, design, construction, equipping, and
21 continuing operation and maintenance of a Cul-
22 tural Resource Repository and Interpretive Cen-
23 ter to—

24 (i) house, preserve, and protect the
25 burial remains, funerary objects, and other

1 cultural resources affected by the operation
2 of the Grand Coulee Dam; and

3 (ii) provide an interpretive and edu-
4 cational facility regarding the culture and
5 history of the Spokane Tribe.

6 (B) EFFECT.—The funding under sub-
7 paragraph (A) does not alter or affect any au-
8 thority, obligation, or responsibility of the
9 United States under—

10 (i) the Native American Graves Pro-
11 tection and Repatriation Act (25 U.S.C.
12 3001 et seq.);

13 (ii) the Archaeological Resources Pro-
14 tection Act (16 U.S.C. 470aa et seq.);

15 (iii) the National Historic Preserva-
16 tion Act (16 U.S.C. 470 et seq.); or

17 (iv) the National Environmental Pol-
18 icy Act of 1969 (42 U.S.C. 4321 et seq.).

19 (2) OTHER USES.—Of all other amounts depos-
20 ited in the Fund (including interest generated on
21 those amounts)—

22 (A) 25 percent shall be—

23 (i) reserved by the Spokane Business
24 Council; and

1 (ii) used for discretionary purposes of
2 general benefit to all members of the Spo-
3 kane Tribe; and

4 (B) 75 percent shall be used by the Spo-
5 kane Business Council to carry out—

6 (i) resource development programs;

7 (ii) credit programs;

8 (iii) scholarship programs; or

9 (iv) reserve, investment, and economic
10 development programs.

11 **SEC. 6. PAYMENTS BY THE ADMINISTRATOR.**

12 (a) INITIAL PAYMENT.—On March 1, 2007, the Ad-
13 ministrator shall pay the Spokane Tribe—

14 (1) the amount that is equal to 29 percent of
15 the Computed Annual Payment, for fiscal year
16 2005, adjusted to reflect the change in the Con-
17 sumer Price Index for all urban consumers published
18 by the Department of Labor, from the date on which
19 the payment for fiscal year 2005 was made to the
20 Colville Tribes to the date on which payment is
21 made to the Spokane Tribe under this subpara-
22 graph; and

23 (2) the amount that is equal to 29 percent of
24 the Computed Annual Payment for fiscal year 2006.

1 (b) SUBSEQUENT PAYMENTS.—On or before March
2 1, 2008, and March 1 of each year thereafter, the Admin-
3 istrator shall pay the Spokane Tribe the amount that is
4 equal to 29 percent of the Computed Annual Payment for
5 the previous fiscal year.

6 (c) PAYMENT RECOVERY.—Pursuant to the payment
7 schedule in subsection (b), the Administrator shall make
8 commensurate cost reductions in expenditures on an an-
9 nual basis to recover each payment to the Tribe. The Ad-
10 ministrator shall include this specific cost reduction plan
11 in the annual budget submitted to Congress.

12 **SEC. 7. TREATMENT AFTER FUNDS ARE PAID.**

13 (a) USE OF PAYMENTS.—Payments made to the Spo-
14 kane Business Council or Spokane Tribe under section 5
15 or 6 may be used or invested by the Business Council in
16 the same manner and for the same purposes as other Spo-
17 kane Tribe governmental funds.

18 (b) NO TRUST RESPONSIBILITY OF THE SEC-
19 RETARY.—Neither the Secretary nor the Administrator
20 shall have any trust responsibility for the investment, su-
21 pervision, administration, or expenditure of any funds
22 after the date on which the funds are paid to the Spokane
23 Business Council or Spokane Tribe under section 5 or 6.

24 (c) TREATMENT OF FUNDS FOR CERTAIN PUR-
25 POSES.—The payments of all funds to the Spokane Busi-

1 ness Council and Spokane Tribe under sections 5 and 6,
 2 and the interest and income generated by the funds, shall
 3 be treated in the same manner as payments under section
 4 6 of the Saginaw Chippewa Indian Tribe of Michigan Dis-
 5 tribution of Judgment Funds Act (100 Stat. 677).

6 (d) TRIBAL AUDIT.—After the date on which funds
 7 are paid to the Spokane Business Council or Spokane
 8 Tribe under section 5 or 6, the funds shall—

9 (1) constitute Spokane Tribe governmental
 10 funds; and

11 (2) be subject to an annual tribal government
 12 audit.

13 **SEC. 8. REPAYMENT CREDIT.**

14 (a) IN GENERAL.—The Administrator shall deduct
 15 from the interest payable to the Secretary of the Treasury
 16 from net proceeds (as defined in section 13 of the Federal
 17 Columbia River Transmission System Act (16 U.S.C.
 18 838k))—

19 (1) in fiscal year 2007, \$2,600,000; and

20 (2) in each subsequent fiscal year in which the
 21 Administrator makes a payment under section 6,
 22 \$1,300,000.

23 (b) CREDITING.—

1 (1) IN GENERAL.—Except as provided in para-
2 graphs (2) and (3), each deduction made under this
3 section shall be—

4 (A) a credit to the interest payments oth-
5 erwise payable by the Administrator to the Sec-
6 retary of the Treasury during the fiscal year in
7 which the deduction is made; and

8 (B) allocated pro rata to all interest pay-
9 ments on debt associated with the generation
10 function of the Federal Columbia River Power
11 System that are due during the fiscal year.

12 (2) DEDUCTION GREATER THAN AMOUNT OF
13 INTEREST.—If, in any fiscal year, the deduction is
14 greater than the amount of interest due on debt as-
15 sociated with the generation function for the fiscal
16 year, the amount of the deduction that exceeds the
17 interest due on debt associated with the generation
18 function shall be allocated pro rata to all other inter-
19 est payments due during the fiscal year.

20 (3) CREDIT.—To the extent that a deduction
21 exceeds the total amount of interest described in
22 paragraphs (1) and (2), the deduction shall be ap-
23 plied as a credit against any other payments that
24 the Administrator makes to the Secretary of the
25 Treasury.

1 **SEC. 9. TRANSFER OF ADMINISTRATIVE JURISDICTION**
2 **AND RESTORATION OF OWNERSHIP OF LAND.**

3 (a) **TRANSFER OF JURISDICTION.**—The Secretary
4 shall transfer administrative jurisdiction from the Bureau
5 of Reclamation to the Bureau of Indian Affairs over—

6 (1) all land acquired by the United States
7 under the Act of June 29, 1940 (16 U.S.C. 835d),
8 that is located within the exterior boundaries of the
9 Spokane Indian Reservation established pursuant to
10 the Executive Order of January 18, 1881; and

11 (2) all land on the south bank of the Spokane
12 River that—

13 (A) extends westerly from Little Falls
14 Dam to the confluence of the Spokane River
15 and Columbia River; and

16 (B) is located at or below contour elevation
17 1290 feet above sea level.

18 (b) **RESTORATION OF OWNERSHIP IN TRUST.**—All
19 land transferred under this section—

20 (1) shall be held in trust for the benefit and use
21 of the Spokane Tribe; and

22 (2) shall become part of the Spokane Indian
23 Reservation.

24 (c) **RESERVATION OF RIGHTS.**—

25 (1) **IN GENERAL.**—The United States reserves
26 a perpetual right, power, privilege, and easement

1 over the land transferred under this section to carry
2 out the Columbia Basin Project under the Columbia
3 Basin Project Act (16 U.S.C. 835 et seq.).

4 (2) RIGHTS INCLUDED.—The rights reserved
5 under paragraph (1) further include the right to op-
6 erate, maintain, repair, and replace boat ramps,
7 docks, and other recreational facilities owned or per-
8 mitted by the United States and existing on the date
9 of enactment of this Act.

10 (3) RETENTION OF NATIONAL PARK SYSTEM
11 STATUS.—

12 (A) IN GENERAL.—Land transferred under
13 this section that, before the date of enactment
14 of this Act, was included in the Lake Roosevelt
15 National Recreation Area shall remain part of
16 the Recreation Area.

17 (B) ADMINISTRATION.—Nothing in this
18 section affect the authority or responsibility of
19 the National Park Service to administer the
20 Lake Roosevelt National Recreation Area under
21 the Act of August 25, 1916 (39 Stat. 535,
22 chapter 408; 16 U.S.C. 1 et seq.).

23 (4) MEMORANDUM OF UNDERSTANDING.—The
24 cognizant agencies of the Department of the Interior
25 shall enter into a memorandum of understanding

1 with the Spokane Tribe to provide for coordination
2 in applying this subsection.

3 **SEC. 10. SATISFACTION OF CLAIMS.**

4 Payment by the Secretary under section 5 and the
5 Administrator under section 6 and restoration of owner-
6 ship of land in trust under section 9 constitute full satis-
7 faction of the claim of the Spokane Tribe to a fair share
8 of the annual hydropower revenues generated by the
9 Grand Coulee Dam project for the past and continued use
10 of land of the Spokane Tribe for the production of hydro-
11 power at Grand Coulee Dam.

12 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated such sums
14 as are necessary to carry out this Act.

15 **SEC. 12. PRECEDENT.**

16 Nothing in this Act establishes any precedent or is
17 binding on the Southwestern Power Administration, West-
18 ern Area Power Administration, or Southeastern Power
19 Administration.

Passed the Senate November 19, 2004.

Attest: EMILY J. REYNOLDS,
Secretary.